

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28..11..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. No.26125 of 2006

C.Banumathi

.. Petitioner

vs.

1. The Director of Public Health &
Preventive Medicine Department
Chennai - 6

2. The Deputy Director of
Public Health Services
Villupuram

.. Respondents

Petition filed under Article 226 of the Constitution of India seeking for issue of writ of Mandamus directing the respondents to regularise the appointment and services of the petitioner as an Office Assistant in the office of the second respondent with effect from 23.10.1996 and to provide her all the pecuniary and service benefits consequential to such regularisation.

For Petitioner : Mrs. Mythili Srinivas

For Respondents : Mrs.C.K.Vishnupriyan, GA

ORDER

I have heard the arguments of Mrs. Mythili Srinivas, learned counsel appearing for the petitioner and Mrs. C.K. Vishnupriya, learned Government Advocate, representing the respondents and have perused the records.

2. The petitioner is the daughter of late S.Chinnayan, who was working as a field worker in the Filaria Eradication Scheme. He died in harness on 20.3.1990. The petitioner applied for employment assistance under the relevant scheme in force. By an order dated 23.10.1996, the second respondent appointed the petitioner as Office Assistant on a temporary basis. At the time of applying for appointment, the petitioner gave all the relevant details in support of her claim and she has been working in the said post from 30.10.1996. She petitioner was making representations to the respondents seeking for regularisation of her services in the post held by her. In response to her counsel's notice dated 28.10.2000, the first respondent sent a reply stating that the documents furnished

by her have been verified by the Deputy Director of Public Health Services, Villupuram, and after getting his report, necessary orders will be passed for regularising her services. The petitioner sent representations dated 13.10.2003, 10.02.2006 and 15.6.2006 seeking for regularisation of her services and till date, no action has been taken on her representations. Because of non-regularisation, the petitioner was getting only the basic pay of Rs.2550/- and she is not getting surrender leave and loan from the welfare fund. Under these circumstances, the present writ petition has been filed seeking for a direction to the respondents to regularise the services of the petitioner as an Office Assistant with effect from 23.10.1996 with all consequential benefits.

3. In the writ petition, learned Government Advocate was directed to take notice. Thereafter, the respondents were directed to produce the file relating to the petitioner's case. A counter affidavit dated 28.9.2006 has been filed by the first respondent wherein it is stated that the petitioner had originally applied for compassionate appointment and as she did not produce necessary documents, she was provided with temporary employment. The petitioner was the second unmarried daughter of the deceased and it was for her, the appointment on compassionate ground was sought for. The appointment was given on 23.10.1996 and she joined on 30.10.1996 and according to the petitioner, she got married and has got one male child with two years old. Since there was a doubt about her marriage, she was asked to produce the necessary certificates. According to the respondents, her son was born on 11.9.1997 and the daughter was born on 17.8.1998. But, she has not given any details to the Department regarding her marriage. According to the respondents, as per the Government Order in force, compassionate appointment can be given only to the unmarried daughters and since the petitioner claimed that she was unmarried, she was given the appointment.

4. Now, the doubt expressed is whether she was unmarried at the time of appointment. But the marriage invitation produced even along with the counter shows that the marriage had taken place only on 03.11.1996 and not at the time when the petitioner had joined the service. Therefore, the petitioner cannot be found fault with. The Birth Certificate of her son shows the date of birth as 11.9.1997 and for the daughter, the date of birth is shown as 17.8.1998 and no exception can be taken regarding the same. The petitioner is not disqualified by the order of the Government in G.O. Ms. No. 225 Labour dated 15.02.1972 and the clarification letter of the Government dated 04.5.1978 as at the time of employment, the petitioner was undoubtedly an unmarried daughter. The fact that she got married subsequently, cannot be a disqualification for continuing in the service. It is not the case of the Government that a person once employed in the

category of unmarried daughter, being the legal heir of the deceased Government servant, should not get married for all times to come. If such a condition is imposed, the said condition will be unconstitutional in the light of the judgment of the Supreme Court reported in (1981) 4 SCC 335 [Air India v. Nergesh Meerza]. Therefore, the action of the respondents in not granting regularisation to the petitioner even for a period of eleven years is clearly arbitrary and cannot be sustained in law.

5. In view of the above, the writ petition stands allowed and the respondents are directed to regularise the services of the petitioner as Office Assistant with effect from 30.10.1996 with all consequential benefits. This exercise shall be undertaken by the respondents within a period of four weeks from the date of receipt of a copy of this order. No costs.
gri

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Director of Public Health & Preventive Medicine Department
Chennai - 6
2. The Deputy Director of Public Health Services
Villupuram.

+ One cc to Mr. R. Srinivas, Advocate SR 70212

BK (co)

sg 04/12/07

Order in
W.P. No.26125 of 2006
Delivered on

28..11..2007

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